



## **Association Health Plans Guidance**

The final Association Health Plans rule, published in the Federal Register 6/21/2018 as 83 FR 28912 by the U.S. Department of Labor (DOL), creates a new “pathway” for employers to form an Association Health Plan (AHP), offering more flexibility than previously existed. The rule may be viewed at <https://www.federalregister.gov/documents/2018/06/21/2018-12992/definition-of-employer-under-section-35-of-erisa-association-health-plans>.

All AHPs, including those formed under the new pathway and regardless of whether they are fully- insured or self-funded, are Multi-Employer Welfare Associations (MEWAs). Therefore, all AHPs must comply with pre-existing federal and state laws and regulations regarding MEWAs, as well as the provisions of the new rule. The new rule has established applicability dates of 9/1/18 for fully-insured AHPs, 1/1/19 for existing self-funded AHPs, and 4/1/19 for new self-funded AHPs formed pursuant to the new rule.

The following is a summary of federal requirements for the formation of a valid AHP under the recent federal rule:

**A substantial business purpose other than the provision of health benefits** - Although the provision of health care benefits to its members may be the primary purpose for which an association is formed, it cannot be the only purpose. There must also be at least one substantial business purpose. A substantial business purpose is considered to exist if the entity would be a viable association even in the absence of sponsoring a health plan. Although “business purpose” is not specifically defined in the rule, examples include providing business-related educational materials or classes to members, setting business standards or practices, or advancing the interests of an industry.

**Commonality of interest** - Under the new rules, association members do not need to be in the same business or industry. However, they must have at least one of the following in common:

- Trade, industry, line of business or profession;
- Principal place of business in the same state, city or county; or
- Principal place of business in the same metropolitan area (which could include more than one state)

**Formal organizational structure** - The association must have a governing body and by-laws.

**Control by employer members** - Participating employers must exercise control of the association and the health plan. Employer members are considered to exercise control when they, for example:

- Nominate and elect directors, officers, trustees or other members of a governing body;
- Have authority to remove such directors, officers, trustees, etc.; or
- Have the authority and opportunity to approve or veto decision affecting plan design, such as changes in coverage, benefits and premiums.

**Non-discrimination** - AHPs formed under the new rule must comply with federal non-discrimination provisions. The plan cannot exclude an employer from participating, charge different premium rates, or otherwise discriminate against an employer member based on a

health condition of one or more employees. Employer members can be treated differently based on:

- Occupation or industry,
- Region where an employer is located,
- Participation in a wellness program, and
- Any other non-health factor.

**Rules for “working owners”** - Working owners are sole proprietors who do not have any employees. Associations can allow working owners to join, but are not required to do so. The working owner may participate regardless of other options for group coverage (the preliminary rule had a requirement that the working owner could participate in an AHP only as a last resort). In order to qualify, working owners must:

- Work at least each 20 hours per week or 80 hours per month, or
- Have earnings from the business of at least enough to pay the cost of the AHP.

**Compliance with market rules** - The applicable rules by which the association must abide are determined by the overall size of the association. Thus, an association formed solely of small employers, where the total number of employees (including working owners) exceeds 50, will be subject to the requirements of the large group market, including the Affordable Care Act and all other applicable federal rules as well as state regulation.

The association must comply with federal requirements concerning MEWAs, including the requirement to file Form M-1 with the DOL at least 30 days prior to the effective date of the AHP, before extending operations to a new state, and annually thereafter.

### **Idaho Requirements (Fully-insured)**

Carriers submitting AHPs must comply with all federal and Idaho requirements for the submission of group health insurance plans (see [Idaho Code 41-1812](#) and [Idaho Code 41-1813](#) for the filing requirements). For AHPs subject to Idaho’s large employer insurance laws, the plans must comply with [Title 41, Chapter 22, Idaho Code](#) for the plan requirements.

Carriers must submit the following to the Department, prior to the association marketing the plan:

- Copy of association articles of incorporation, partnership agreement, firm documents, bylaws, etc.;
- Narrative documenting the activities and benefits provided by the association to members which are not insurance related;
- Insurance policy, certificate, riders, endorsements, disclosures and applications;
- Copies of all insurance-related sales, marketing and advertising materials;
- A description of how the product will meet non-discrimination requirements regarding the acceptance and rating of employers;
- The counties and/or zip codes making up the AHP service area.

### **Idaho Requirements (Self-Funded)**

In addition to submitting the documents identified for fully-insured AHPs, self-funded AHPs must comply with all requirements of [Title 41, Chapter 40, Idaho Code](#) and [IDAPA 18.01.27](#). Detailed instructions, along with the necessary forms, are available at the Department’s website at <https://doi.idaho.gov/Company/SFHCP/Single> .

Some requirements include:

- Registration with the Department, including the provision of the application form and all other required forms and documentation,
- Formation of a trust and the appointment of a trustee to manage and administer the AHP,
- Maintenance of actuarially sound rates, reserves, and minimum surplus,
- Submission of annual and quarterly financial statements, and
- Filing of the annual statement of taxes and fees, along with payment of the tax of 4¢ per month per beneficiary working or residing in Idaho.

The plan administrator, if other than the trustee, must comply with the requirements for third-party administrators set forth in [Title 41, Chapter 9, Idaho Code](#) including the requirement to be registered with the Department.

Additional information regarding agents and AHPs can be viewed on our [Association Health Plans FAQ page](#).